

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

**FILED**  
04/07/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
43B-0771-R-2022  
Lambert, Kathryn  
5.00

MONTANA WATER COURT, YELLOWSTONE DIVISION  
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN  
BASIN 43B  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANT: Robert Forstenzer

**CASE 43B-0771-R-2022**

43B 194399-00

43B 194400-00

43B 194401-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

Each of these claims appeared in the Preliminary Decree with an issue remark concerning the existence of the claimed reservoir. The issue remarks were not addressed

through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence. The claimant agreed to meet with the Montana Department of Natural Resources and Conservation [“DNRC”]. On February 7, 2023 the DNRC Memorandum was filed. On February 21, 2023 Robert Forstenzer filed his response agreeing with the DNRC Memorandum. The settlement documents are viewable in the Court’s FullCourt Enterprise case management system.

#### APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDINGS OF FACT

1. These claims each appeared in the Preliminary Decree with the following issue remark:

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

For each claim, the Preliminary Decree includes an offstream reservoir in the SESWNE section 31, T1S, R10E, PARK. The reservoir should be removed. The issue remarks should be removed as addressed and resolved.

2. For each of these claims, the Preliminary Decree also includes the following notice remarks:

ALTHOUGH NOT OBJECTED TO, THE PLACE OF USE WAS CHANGED TO REFLECT THE REDUCTION IN MAXIMUM ACRES IRRIGATED.

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

These remarks provide notice of actions taken during the Temporary Preliminary Decree proceedings or prior to issuance of the Preliminary Decree and do not raise unresolved issues which need to be addressed. These remarks should be removed as having served their notice purposes.

#### CONCLUSION OF LAW

The information provided by the DNRC and the claimant is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

#### **ELECTRONICALLY SIGNED AND DATED BELOW**

#### Service Via USPS Mail:

Robert Forstenzer  
177 Old Clyde Park Rd  
Livingston, MT 59047-9226

\\JUDGALH2OSRV\Data\o\Share\WC-BASIN FOLDERS\43B PD\43B Cases\771R\771R mr 3-31-23 jbc.docx

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 194399-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** ROBERT FORSTENZER  
177 OLD CLYDE PARK RD  
LIVINGSTON, MT 59047 9226

**Priority Date:** DECEMBER 31, 1883

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION  
**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 2.30 CFS

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 3 - MODERATE

**\*Maximum Acres:** 200.00

**Source Name:** FERRY CREEK  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWNE	31	1S	10E	PARK
<b>Period of Diversion:</b> APRIL 15 TO OCTOBER 15						
<b>Diversion Means:</b> PUMP/HEADGATE W/DITCH OR PIPELINE						
<b>Ditch Name:</b> STOLE DITCH						
2		SESWNE	31	1S	10E	PARK
<b>Period of Diversion:</b> APRIL 15 TO OCTOBER 15						
<b>Diversion Means:</b> HEADGATE						
<b>Ditch Name:</b> STOLE DITCH						
3		SESWNE	31	1S	10E	PARK
<b>Period of Diversion:</b> APRIL 15 TO OCTOBER 15						
<b>Diversion Means:</b> HEADGATE						
<b>Ditch Name:</b> STOLE DITCH						
<b>Period of Use:</b> APRIL 15 TO OCTOBER 15						

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	80.00		SE	31	1S	10E	PARK
2	120.00		SW	32	1S	10E	PARK
<b>Total:</b>	200.00						

---

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

194399-00

194400-00

194401-00

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 194400-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** ROBERT FORSTENZER  
177 OLD CLYDE PARK RD  
LIVINGSTON, MT 59047 9226

**Priority Date:** DECEMBER 31, 1882

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION  
**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 1.08 CFS

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 3 - MODERATE

**\*Maximum Acres:** 200.00

**Source Name:** FERRY CREEK  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWNE	31	1S	10E	PARK
<b>Period of Diversion:</b> APRIL 15 TO OCTOBER 15						
<b>Diversion Means:</b> PUMP/HEADGATE W/DITCH OR PIPELINE						
<b>Ditch Name:</b> STOLE DITCH						
2		SESWNE	31	1S	10E	PARK
<b>Period of Diversion:</b> APRIL 15 TO OCTOBER 15						
<b>Diversion Means:</b> HEADGATE						
<b>Ditch Name:</b> STOLE DITCH						
3		SESWNE	31	1S	10E	PARK
<b>Period of Diversion:</b> APRIL 15 TO OCTOBER 15						
<b>Diversion Means:</b> HEADGATE						
<b>Ditch Name:</b> STOLE DITCH						
<b>Period of Use:</b> APRIL 15 TO OCTOBER 15						

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	80.00		SE	31	1S	10E	PARK
2	120.00		SW	32	1S	10E	PARK
<b>Total:</b>	200.00						

---

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

194399-00

194400-00

194401-00

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 194401-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** ROBERT FORSTENZER  
177 OLD CLYDE PARK RD  
LIVINGSTON, MT 59047 9226

**Priority Date:** DECEMBER 31, 1896

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION  
**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 359.00 GPM

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 3 - MODERATE

**\*Maximum Acres:** 200.00

**Source Name:** FERRY CREEK  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWNE	31	1S	10E	PARK
<b>Period of Diversion:</b> APRIL 15 TO OCTOBER 15						
<b>Diversion Means:</b> PUMP/HEADGATE W/DITCH OR PIPELINE						
<b>Ditch Name:</b> STOLE DITCH						
2		SESWNE	31	1S	10E	PARK
<b>Period of Diversion:</b> APRIL 15 TO OCTOBER 15						
<b>Diversion Means:</b> HEADGATE						
<b>Ditch Name:</b> STOLE DITCH						
3		SESWNE	31	1S	10E	PARK
<b>Period of Diversion:</b> APRIL 15 TO OCTOBER 15						
<b>Diversion Means:</b> HEADGATE						
<b>Ditch Name:</b> STOLE DITCH						
<b>Period of Use:</b> APRIL 15 TO OCTOBER 15						

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	80.00		SE	31	1S	10E	PARK
2	120.00		SW	32	1S	10E	PARK
<b>Total:</b>	200.00						



---

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

194399-00

194400-00

194401-00